

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEAN GAULDEN,)
)
Plaintiff(s),)
)
vs.) Case No. 4:07CV01637 ERW
)
CITY OF DESLOGE, MISSOURI, et al.,)
)
Defendant(s).)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Motion to Compel and for Sanctions [doc. #41]. A hearing was held on January 6, 2009, and the Court heard arguments from the Parties on the pending Motion. Counsel for Defendants has since filed a Response to Plaintiff's Motion to Compel and for Sanctions [doc. #48], and therein consented to both the compel and sanction aspects of Plaintiff's Motion.

Defendant Nathan Bentley was scheduled to have his deposition taken by counsel for Plaintiff on December 15, 2008. Defendant Bentley, through counsel, requested that the deposition be rescheduled for December 22, 2008. Counsel for Plaintiff accommodated this request and the deposition was rescheduled for 1:00 p.m. on December 22, 2008. A court reporter and counsel for both Plaintiff and Defendants were all in attendance on December 22, but Defendant Bentley failed to appear, apparently due to lack of funds needed to travel from Kentucky to St. Louis, Missouri.

Federal Rule of Civil Procedure 26(b)(1) provides that the Parties to an action "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). The Court finds that Plaintiff is entitled to take the deposition of Defendant Bentley, and that Defendant Bentley's failure to appear at the scheduled December

22 deposition was inexcusable. As a result, the Court orders Defendant Bentley to appear for his deposition at 9:00 a.m. on February 2, 2009, at Schottel and Associates, P.C., 1221 Locust Street, Eighth Floor, St. Louis, Missouri 63103.

The Court also finds that an award of expenses and attorney's fees is appropriate in this case. Federal Rule of Civil Procedure 37(d)(1)(A)(I) provides that a Court "may, on motion, order sanctions if a party . . . fails, after being served with proper notice, to appear for that person's deposition." As a result of his failure to appear, Defendant Bentley is ordered to pay a \$100.00 sanction to Mr. Schottel for attorney's fees incurred while waiting for Defendant Bentley on December 22. Additionally, Defendant Bentley is ordered to pay an as-yet-undetermined amount in court reporter appearance fees.

Accordingly,

IT IS HEREBY ORDERED that the deposition of Nathan Bentley will be held at 9:00 a.m. on February 2, 2009, at Schottel and Associates, P.C., 1221 Locust Street, Eighth Floor, St. Louis, Missouri 63103. Defendant Bentley is ordered to attend.

IT IS FURTHER ORDERED that Defendant Bentley shall pay a \$100.00 sanction to Mr. Schottel for attorney's fees, in addition to an undetermined amount in court reporter appearance fees.

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this Order by regular and certified mail, return receipt requested, to Defendant Nathan Bentley, at the following address: 9294 U.S. Highway 23 South, Pikeville, KY 41501.

Dated this 9th Day of January, 2009.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE